STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Ameren Illinois Company	**)**	
	)	**ICC Docket No. 13-0192**
Proposed General Increase in Gas	**)**	
Rates and Revisions to Other Terms	**)**	
And Conditions of Service	**)**	

EXCEPTIONS AND BRIEF ON EXCEPTIONS OF THE PEOPLE OF THE STATE OF ILLINOIS

The People of the State of Illinois

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Table of Contents

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NOW COME the People of the State of Illinois ("AG" or "the People"), by Lisa Madigan, Attorney General of the State of Illinois, pursuant to Part 200.830 of the Illinois Commerce Commission's ("the Commission") rules, 83 Ill. Adm. Code Part 200.830, and in accordance with the schedule established in this docket, hereby file their Brief on Exceptions and Exceptions to the Proposed Order ("PO") issued by the Administrative Law Judges (ALJs) in the above-captioned docket on November 14, 2013, which will establish gas delivery rates for Ameren Illinois Company ("Ameren" or "AIC" or "the Company").

I. INTRODUCTION

The People of the State of Illinois applaud the Proposed Order's thoughtful conclusions on a number of intricate issues presented in this docket. That said, the People except to the conclusions on the following five issues addressed in the Proposed Order.

1. The Proposed Order's rejection of the People's proposed adjustment to Metro East-related accumulated deferred income tax is wrongly based on prior precedent and fails to consider the record evidence in this docket showing that ratepayers should not

be forced to support a higher rate base solely as a result of an inter-affiliate asset transfer.

2. The Proposed Order's rejection of the People's proposed adjustment to forecasted test-year labor expense is based on a misinterpretation of the Company's statutory burden to prove its rate request to be just and reasonable; it also fails to recognize the Company's refusal to establish or quantify the connection between its proposed new hiring and its particular proposals for new, necessary work.
3. Although the Proposed Order arrives at the proper conclusion on a number of the Non-Labor expenses at issue in this docket, the Proposed Order fell short on (a) Accelerated Leak Repairs; (b) Right of Way Clearing; and (c) the Watch and Protect Program.
4. The Proposed Order's acceptance of the Company's propounded sponsorship expenses fails to recognize the impropriety of allowing sponsorship expenses to be recovered for charitable purposes, and the Proposed Order also fails to recognize that the Company failed to meet its burden of demonstrating that it should be allowed to recover these projected expenses.
5. The Proposed Order's rejection of the People's proposed adjustment to non-residential operating revenues is based on a mischaracterization of the People's position and fails to consider the People's comprehensive consideration of data in the record; it also wrongly gives credence to a Company contention regarding customer "switching" that is unsupported by the record.

In light of the foregoing and the arguments presented in the People's Initial and Reply Briefs, the People urge the Commission to adopt the People's recommendations on these issues.

II. Exception No. 1: ADIT – Step-up Basis Metro

The People take exception to the ALJ's decision in the Proposed Order to reject their proposed adjustment that would remove the amount of Metro East-related accumulated deferred income tax ("ADIT") debit currently recorded to the Company's Account 190. First, the ALJ extensively discussed the reasoning and decisions in Docket Nos. 12-0001 and 12-0293 and stated in the Proposed Order at 14 that the evidence in this proceeding was not "sufficient to support a result opposite" from the two prior cases. However, it should be noted that Illinois courts have consistently held that prior Commission decisions are not *res judicata*. *Commonwealth Edison Co. v. Ill. Comm. Comm'n et al.*, Nos. 2-08-0959 *et al.* (cons.), 405 Ill.App.3d 389, 407 (Sep. 30, 2010). The Commission has power to deal freely with each situation that comes before it, regardless of how it may have dealt with a similar or even the same situation in a previous proceeding. *Id* at 407-408. Thus, the Commission should not feel constrained in this proceeding by its decisions reached on this issue in Docket Nos. 12-0001 and 12-0293. As shown below, the evidence in this docket clearly indicates that the People's proposed adjustment on this issue must be accepted by the Commission.

As the People stated in their Corrected Initial Brief at page 11, immediately prior to the transfer of the Metro East plant, Union Electric's Account 282 included approximately $2.684 million of ADIT associated with the Metro East plant. Tr. at 334:5-10; AG/CUB Cross Exhibit 6, Response to MHE 3.02 Attach. Union Electric's Metro East plant operated entirely within the State of Illinois prior to the transfer to CIPS. Tr. at 343:9. Thus, Illinois gas ratepayers were exclusively receiving the benefit of $2.684 million of Metro East-related ADIT immediately before the transfer. After the transfer, Illinois ratepayers lost the benefit of the ADIT deduction with respect to Union Electric service, because Union Electric was no longer operating in

Illinois. Nor was the benefit passed to ratepayers in Missouri, where Union Electric is based: during cross-examination, Company witness Stafford stated that he had no knowledge that Union Electric's deferred tax liability related to the intercompany transfer of the Metro East assets was ever deducted from Union Electric's rate base in Missouri Public Service Commission rate cases following the transfer. Tr. at 337:1-4; 343:3-7.

As Staff witness Everson noted in her direct testimony, the underlying value of the Metro East asset was the same in the hands of CIPS as in the hands of Union Electric, but because the net ADIT value on the books of CIPS related to Metro East was set to zero, the total net rate base of the Metro East plant was made higher, and ratepayers should not be required to support an increase in rate base for the same asset simply because the asset changed ownership. Staff Ex. 1.0, 11:201-12:209. Similarly, AG/CUB witness Effron stated that "utility holding companies should not be allowed to increase the net rate base value of assets by transferring the assets between affiliates." AG/CUB Ex. 2.0, 5:111-6:112. As shown in Staff Ex. 10.0 (Rev.), Attachment A, the Company agreed in its data request response to MHE 10.01 that as a result of the offsetting ADIT step-up basis entry to Account 190 of CIPS, the CIPS rate base increased by approximately $3.011 million. Mr. Stafford also admitted in his surrebuttal testimony that "Mr. Effron is correct that rate base increased when the asset transfer was made." AIC Ex. 31.0, 16:320. While the step-up basis entry in Account 190 has been gradually decreasing over time through amortization, according to Company witness Stafford (Tr. at 344:13-17), and as shown in the response to MHE 12.02 Attach (AG Cross-Exhibit 6), it is still positive.

As the People demonstrated in their Reply Brief at 5-6, the Company's contention in its Initial Brief at 8 that "the record shows that AIC's books presently contain roughly $4 million of accumulated deferred taxes in rate base" was based on pure speculation and erroneous calculations unsupported by data in the record. Company witness Stafford gave a better assessment of the Company's degree of confidence in this analysis when he said in surrebuttal testimony that "it is *possible* that the ADIT deduction is greater under AIC's proposed treatment than it would be on Ameren Missouri's books if the transfer had not taken place" (AIC Ex. 31.0, 17:356-359, emphasis added). Many things are possible in this world, but without supporting evidence therefor or quantification of the probability thereof, the Commission should not allow Illinois ratepayers to lose the ADIT benefit accumulated on the Metro East asset while it was held by Union Electric.

Exception No. 1 Proposed Language

In accordance with the arguments presented above, the Commission analysis and conclusion at page 14 should be modified as follows:

> Having reviewed the record in this proceeding as well as the findings in the prior two Orders, the Commission is ~~not~~ persuaded that the additional evidence~~, which largely consists of conflicting testimony about~~ regarding rate base impacts resulting from the 2005 transaction over time -- i.e. to date and prospectively -- is sufficient to support a result opposite of that reached by the Commission in Docket Nos. 12-0001 and 12-0293. The Commission agrees with the contention offered in testimony by AG/CUB and Staff witnesses that a utility should not be allowed to increase its rate base solely by transferring an asset from one corporate affiliate to another at book value. Accordingly, the adjustment proposed by Staff and AG/CUB will ~~not~~ be adopted in this Order.

III. Exception No. 2: Forecasted Labor Expense

The People take exception to the Proposed Order's rejection of AG/CUB witness Brosch's proposed adjustment to test-year labor expense. The ALJ states at page 33 of the Proposed Order that "Mr. Brosch did not identify any specific activities that he considers to be unnecessary for the Company to perform; therefore, he does not associate any of the Company's proposed increases in gas-only positions with unnecessary activities." However, an intervenor party does not have the burden to prove that a proposed increase in operating expense is associated with *unnecessary* activities; rather, the *utility has the burden* to show that its proposed increase in operating expense, its proposed expansion of activities, or its proposed increment in staffing is necessary. 220 ILCS 5/9-201(c) ("the burden of proof to establish the justness and reasonableness of the proposed rates or other charges, classifications, contracts, practices, rules or regulations, in whole and in part, shall be upon the utility"). See also *Commonwealth Edison Co. v. Ill. Comm. Comm'n et al.*, Nos. 2-08-0959 *et al.* (cons.), 405 Ill.App.3d 389, 394 (Sep. 30, 2010) ("if the Commission initiates a proceeding concerning the appropriateness of a utility's proposed rates, the utility has the burden of proving that the proposed rates are just and reasonable").

AIC is proposing in this proceeding to increase its gas-only staffing from 664 actual positions as of July 1, 2013 to 727 positions as of January 1, 2014 (AG/CUB Ex. 1.3 at 1), but AIC has failed to prove why its July 1, 2013 staffing level was inadequate. People's Corr. IB at 13. According to AG witness Brosch, evidence to establish that additional staffing was necessary would include work volumes and backlog, overtime charges, and contractor charges for supplemental labor. However, the Company provided no such information. AG/CUB Ex. 1.0 at 19:450-20:463. In fact, the available evidence indicates just the opposite: that the Company is performing adequately across all performance measures tracked presently and is providing safe and reliable Illinois gas service without adding any of the disputed new employee positions. AG/CUB Ex. 1.0 at 20:464-475.

The AG/CUB position with respect to gas-only staffing levels incorporates an increase in the Company's actual staff count in all months to date in 2013 and is consistent with AIC's actual experienced labor requirements to provide safe and adequate service in 2013. AG/CUB Ex. 5.0 at

24 (Figure 1) and 25:605-609. The much higher staffing level proposed by the Company for January of 2014 and beyond is, however, not supported by the evidence. AIC had every opportunity to define and quantify the specific new work that will be needed in 2014, above 2013 work requirements, to defend its staff expansion plans but has failed to provide the required evidence of need.

It should also be noted that AIC has admitted that its senior executive management is awaiting Commission approval of rate recovery for wage and benefit costs associated with 21 new positions proposed in the 2014 test year, prior to making any employment offers. AG/CUB Ex. 1.0 at 21:495-501. Apparently these positions are not truly necessary for safe and adequate service; it is impossible to contemplate the alternative, that the Company would elect to not provide safe and adequate service if filling these positions would reduce its profits. The fact that AIC will only hire to fill all of its proposed positions after they are approved for rate recovery is indicative of the discretionary nature of some of the staffing growth that is included in the Company's proposed revenue requirement. The asserted need for staffing at AIC-proposed levels in the test year is not supported by any quantitative analysis in the Company's evidence, is inconsistent with recent actual staffing requirements, and is undermined by management's admission that it can eliminate some hiring if rate recovery is not allowed.

The ALJ also states in the Proposed Order at 33 that "[t]he Commission observes that in the course of the proceeding, AIC did explain the reasons for the types and numbers of additional positions, and did provide information as to the status and accuracy of those forecasts." However, as AG witness Brosch stated in rebuttal testimony, the Company did not provide "any specification of what this incremental work is or why it cannot be adequately handled with the Company's already expanded staffing." AG/CUB Ex. 5.0 at 26. While the Company asserted in its Initial Brief at 25 that 2013 staffing levels "will not be sufficient to perform the additional work planned in 2014," the Company did not attempt to quantitatively connect next year's additional planned work with a particular increment in staffing. People's Corr. IB at 15. Generalized statements of management's perceived need for staffing expansion, without any detailed specification or measurement of increased work requirements, simply do not meet AIC's burden of proof regarding added employee headcounts. It is not enough to provide a generalized job description or assert that a certain number (6, say, or 3) of new employees is needed for new incremental work, as the Company did in several data request responses; the Company must show a quantified connection between the scope of incremental work and the number of new employees needed.

The People recognize that as of the 66 open positions reported in February 2013, 28 were filled as of July 3, 2013 (AIC Ex. 22.0 at 22:486-23:4982) and that the Company intended to continue filling some of these positions throughout the latter half of the year. However, filling all 66 positions, as well as 21 additional positions proposed for early 2014, constitutes a 13.6% increase in the number of gas-only positions as of the end of March 2014. AIC Ex. 36.1. As demonstrated in the People's Corrected IB and Reply Brief, this increase is not reasonable or supported by evidence. The Commission should adopt the People's proposal to exclude the labor and benefits expense associated with hiring half, or 43, of the proposed new gas-only positions, minus a $311,000 adjustment.

Exception No. 2 Proposed Language

In accordance with the arguments presented above, the Commission analysis and conclusion at page 33 should be modified as follows:

> Upon reviewing the record, the Commission agrees with the analysis and recommendation of the Commission Staff as articulated in its testimony and briefs and as described above<u>, except to the extent that proposed adjustments by</u>

AG/CUB witness Brosch may require a departure from Staff's recommendations.

~~While t~~The Commission recognizes that the Company's forecast documentation was not as easy to comprehend as it could have been, as discussed below.~~, the Commission agrees with Staff that Mr. Brosch's adjustment should not be adopted. As Staff indicated, Mr. Brosch did not identify any specific activities that he considers to be unnecessary for the Company to perform; therefore, he does not associate any of the Company's proposed increases in gas-only positions with unnecessary activities.~~ The Commission observes that in the course of the proceeding, AIC did not explain and quantify with specificity the reasons for the types and numbers of additional positions, and did not provide information as to the status and accuracy of those forecasts. The Commission adopts the recommendation of AG/CUB witness Brosch to disallow 50% of the proposed new gas-only employees, or 43, with a revenue requirement impact of $3,611,794, after accepting an approximately $311,000 offset of an employee vacancy factor suggested by the Company.

The Commission also agrees with Staff that based on the testimony by Mr. Brosch, it is evident that the Company's forecast documentation, while not deficient from a standard filing requirement standpoint, was not ~~as~~ complete or as ~~easy to comprehend~~detailed as it ~~could have or~~ should have been. In that regard, the Commission also recognizes the Company's commitment to improve its documentation in the future. The Commission expects that the Company will make the forecast workpaper improvements ~~as indicated~~ requested by the People at page 18 of their Reply Brief, and hereby directs the Company to do so.

IV. Exception No. 3: Forecasted Non-Labor Expense

a. Exception No. 3(a): Accelerated Leak Repairs

The Proposed Order properly notes that the People agree that additional leak repairs are important for maintaining the integrity and reliability of the Company's delivery system. PO at 38. On the other hand, however, the Proposed Order accepts the Company's prediction that its forecast will enable it to keep pace with new leaks and address the backlog. PO at 38. As demonstrated below, the Proposed Order's conclusions are without evidentiary support and the People urge the Commission to adopt the People's reasonable proposal on this issue.

The People's proposed revised forecast expense of $1,012,500 for Distribution Leak Repairs is fair and represents a significant increase above the Company's historical spending in this area. AG IB at 27; AG/CUB Ex. 5.0, page 1, line 2. In reaching its conclusion, the Proposed Order ignores the fact that the Company's historical spending on these types of repairs has, in recent years, been as low as *zero*. AG IB at 27; AG/CUB Ex. 5.0, page 1, line 2. The People's proposal allows for a generous incremental increase of 400 repairs per year *above and beyond* what the Company has historically completed. AG IB at 27; AG RB at 19-20.

Unfortunately, the Proposed Order accepts the Company's unfounded statements that the People's proposal would not address the backlog. PO at 38. While the Company acknowledged that the People's estimate will allow it to address additional future added leaks, it incorrectly claims that the People's proposed amount of incremental funding is insufficient. AIC IB at 34-35. As demonstrated by the People in their briefs, the Company's assertion that it requires more than the amount included in the People's estimate to address its backlogs is unsupported by the data in this docket. AG IB at 27; AG RB at 20.

The Company failed to provide sufficient information about its leak repair plan, and due to its shortcomings on this issue, the People fairly adopted a forecast amount falling in the mid-point of AIC's targeted incremental leak repair volumes and the Company's estimated cost per repair. AG IB at 28. The Proposed Order pays little attention to the challenges and uncertainties involved in predicting future new leak volumes raised by the People, which demonstrate the reasonableness of adopting the mid-point of the Company's estimates. AG IB at 27; AG/CUB

Ex. 5.0 at 35. The inherent uncertainties in crafting these projections certainly highlight the danger in adopting the Company's worst case scenario "high end" projections, which the Proposed Order does. See AIC IB at 35. Rather, the People's modest adjustment to the Company's proposed forecast, particularly in light of the forecasting bias faced by AIC management[1] to propose a high-end future cost, the People urge the Commission to adopt the recommendation of the People.

Exception No. 3(a) Proposed Language

In accordance with the arguments presented above, the Commission analysis and conclusion at page 38 should be modified as follows:

> **<u>Commission's Conclusions</u>**
>
> The parties who addressed the issue agree that repairing distribution leaks, including leaking mains and services, requires increased attention.
>
> The AG and CUB do not dispute the importance of performing additional leak repairs or the estimated per-repair cost.
>
> The AG and CUB do, however, take issue with the volume or number of test-year leak repairs.
>
> ~~Having reviewed the record, the Commission finds that repair volumes in AIC's forecasts appear reasonable. As indicated above, the evidence indicates that new leaks, and open leaks at year-end, have been increasing. The record supports AIC's argument that its projected expense will enable it to keep pace with the number of new leaks each year, and to make progress toward resolving the current backlog of open leaks; whereas the volume of repairs assumed in the CUB/AG proposal is not likely to address the backlog.~~ <u>The inherent uncertainties in crafting these projections highlight the danger in adopting the Company's worst case scenario "high end" projections. Rather, the Commission agrees with the People's modest adjustment to</u>

[1] As described by Mr. Brosch and in the NRRI report in AG/CUB Ex. 5.0 at 16-17 and AG/CUB Ex. 5.5.

> the Company's proposed forecast, particularly in light of the forecasting bias faced by AIC management, and adopt the recommendation of the People.

b. Exception No. 3(b): ROW Clearing

The People presented a reasonable recommendation that moderates the Company's potentially overstated forecast for expenses related to high pressure distribution right of way (HPD ROW) clearing for leak survey inspections and DIMP programs. AG IB at 28-29; AG/CUB Ex. 5.1 at p. 2, line 4. The Proposed Order, however, ignores the record evidence that demonstrates that, in the most recent past years (2011 and 2012), the Company spent no more than $170,000 on this activity. PO at 41-42. Instead, the Proposed Order accepts the Company's claims that it will now somehow spend $1,200,000 on HPD ROW clearing in 2014 and accepts the Company's basis for costs. PO at 41-42. However, as the People have demonstrated throughout this docket, over each of the next ten years, the Company should be positioned to negotiate favorable rates from vendors. AG RB at 21; AG/CUB Ex. 5.0 at 38. The Company did not have a similar reasonable assumption built into their cost forecast. AG witness Mr. Brosch factored this into his estimated per mile cost and escalated the 2010 actual incurred costs for inflation. *Id.*

The Proposed Order does not properly acknowledge the importance of selecting an appropriate set of years for analyzing the Company's projections – as demonstrated by the People. PO at 38. The reliance upon 2010 data by Mr. Brosch is proper, as this is the most recent actual available data for a year when more than 25 miles of HPD ROW clearing of wooded areas occurred. AG RB at 21. The Company's insistence upon including 2009 data when only about 10 miles of clearing occurred tends to overstate costs per mile and is likely to not be indicative of unit costs when much higher volumes of work (75 miles per year) are assumed to be undertaken.

AG RB at 21. The People's recommendation used the Company's own data for a recent year, factored in a reasonable assumption and adjusted for inflation. The Proposed Order failed to acknowledge these rudimentary facts and should be adjusted.

The Proposed Order also concludes that the People did not support their challenge to the number of miles that the Company plans to clear per year. PO at 41. To the contrary, however, the People did not solely cite to the testimony of Mr. Brosch in support of their position. In fact, the People also cited to the transcript of the evidentiary hearing where Company witness Mr. Colyer acknowledged that while the Company cleared heavily wooded areas in 2007 and 2008, it did not come close to clearing half of the amount that they now project they will be able to complete in 2014. AG IB at 28-29, AG RB at 20-21, citing to AG/CUB Ex. 5.0 at 38 and Tr. at 159, 160, 173.

A consequence of the Company's potential over-projection of the number of miles it can clear in a year is that there is a great risk that ratepayers will pay for services not rendered. The record evidence shows that historically, the Company has never come close to its projected level of miles cleared. As noted above, Company witness Mr. Colyer acknowledged this fact. The People sought to provide a reasonable escalation of the Company's actual costs based on the number of miles that the Company could *realistically* clear per year. AG IB at 28. The Commission should, therefore, adopt the People's proposal.

Exception No. 3(b) Proposed Language

In accordance with the arguments presented above, the Commission analysis and conclusion at page 40-41 should be modified as follows:

Commission's Conclusions

As indicated above, AIC and AG/CUB are in disagreement over the test-year cost per mile for HPD right of way clearing of wooded areas. ~~Although the AG and CUB take issue with~~

> ~~AIC's use of an cost per mile based on an average of 2009 and 2010 costs, AIC has shown that the cost per mile in its proposal is significantly less than the cost per mile in both 2007 and 2008. As such, AIC has not given disproportionate weight to 2009. The Commission finds that the cost per mile in AIC's forecast is reasonable.~~ The People properly relied upon 2010 data, as this is the most recent available data for a year when more than 25 miles of HPD ROW clearing of wooded areas occurred, and reasonably adjusted this amount for potential cost-savings and inflation. Therefore, the Commission adopts the People's well-reasoned proposal.
>
> In its initial brief, the AG also challenges the number of miles of wooded areas that AIC intends to clear per year. In support of its argument, the AG cites Mr. Brosch's rebuttal testimony; however, the cited testimony does not appear to take issue with the reasonableness of that element of the forecast. The Commission finds that the assumption used in AIC's forecast is reasonable. The record evidence shows that historically, the Company has never come close to its projected level of miles cleared. The People provided a reasonable escalation of the Company's actual costs based on the number of miles that the Company could realistically clear per year. The Commission adopts the People's proposed adjustment to the Company's forecast.

c. Exception No. 3(c): Watch and Protect Damage Protection Program

The People presented an adjustment to the Watch and Protect Damage Protection Program rooted in both the record evidence and the Company's own data. The Proposed Order, however, concludes that the Company's estimates for the program were better supported by the record. PO at 43. However, the People note that the moderate decrease they proposed not only was well-supported, it still provided the Company with a generous increase over historical spending.

The primary difference between the Company's proposal and the People's proposal centers on the cost per stand-by transaction. The People proposed a lower cost per transaction and supported it with citations to the record evidence. Contrary to the finding of the Proposed

Order, the People's proposed level of spending is more consistent with the Company's historical expenses and costs associated with the program than the Company's forecast. AG IB at 30; AG/CUB Ex. 5.1, p. 2, line 6. The People's proposed adjustment includes full recovery of the costs for eight full time AIC employees to administer the program and also includes an additional amount to support this effort with contractor resources in 2014. AG/CUB Ex. 5.0 at 41. As explained in the testimony of AG witness Mr. Brosch, the lower unit cost of $100 per stand-by transaction

> is more consistent with the Company's confidential response to data request AG 16.08, part (d), that is included in Ameren Exhibit 22.7 (Rev) at page 19 of 23. That same document indicates an assumed large increase in unit costs per stand-by in part (e) that is not consistent with historical spending and has not been supported or justified by the Company.

AG/CUB Ex. 5.0 at 40. Mr. Brosch further corroborated his expense estimate by noting that the Company's responses to certain data requests indicated that actual Watch and Protect stand-by contractor charges totaled $353,927 in 2012. The expense amount after the AG/CUB proposed adjustment exceeds this 2012 actual amount by about 13 percent. AG/CUB Ex. 5.0 at 41.

The People also reiterate that the Commission will have an opportunity to review progress and unit costs actually incurred by AIC for the Watch and Protect Program in future rate cases to verify the Company's commitment to actually undertake this work and spend at targeted levels. Therefore, the People urge the Commission to adopt the People's well-supported adjustment to the Company's forecasted level of spending.

Exception No. 3(c) Proposed Language

In accordance with the arguments presented above, the Commission analysis and conclusion at page 43 should be modified as follows:

<u>**Commission's Conclusions**</u>

> At issue is the estimated outside contractor cost per stand-by event. Of the two competing estimates, the one proposed by <u>the People</u> ~~AIC~~ appears to be better supported by the record which includes the <u>Company's responses to data requests demonstrating the historical expenses and contractor costs. The People's adjustment also eliminates certain unjustified increases in costs. Therefore, the Commission adopts the People's adjustment to the Watch and Protect Program. The Commission will continue to review progress and unit costs actually incurred by AIC for the Watch and Protect Program in future rate cases.</u> ~~most recent contractor data from 2013, such as stand-by invoices in 2013; the negotiated stand-by base rates; the applicable wage and benefit premium; and the actual 2013 average stand-by time.~~

V. Exception No. 4: Sponsorship Expense

The Proposed Order adopts the standard presented in the most recent Peoples Gas/North Shore Gas rate case order, which allows the Company to recover sponsorship expenses for organizations that are charitable in nature. PO at 73-74; *see* ICC Docket No. 12-0511/12-0512 Order at 164 (June 18, 2013). The Proposed Order characterizes the People's comments on the Peoples Gas/North Shore treatment of sponsorship expenses as "limited." Simply put, however, the People maintain that it is inappropriate to treat sponsorship expenses as charitable rather than as advertising. Charitable expenses are designed to be recovered as Charitable Expenses under Section 9-227 of the Act and sponsorship expenses should be recovered as advertising expenses under Sections 9-225 and 9-226 of the Act. There is no provision that allows for sponsorship expenses to be recovered as Charitable Expenses. Even the Peoples Gas/North Shore order cautioned that the utility "must be more careful in distinguishing sponsorship and institutional expenditures that are allowable for charitable purposes and those that are allowable advertising expenses." ICC Docket No. 12-0511/12-0512 Order at 164. The Company did no such thing here.

The Proposed Order fails to recognize that the Company itself described these expenses as *advertising and sponsorship expenses.* While the Commission may have opened the door to some allowance for sponsorship of charitable organizations serving the Company's service territory in Docket No. 12-0511/12-0512, the Act still distinguishes between charitable giving and sponsorship or advertising. If the Company had wanted to recover these sponsorship expenses as charitable contributions, the Company should have sought recovery for them as charitable contributions. Significantly, the Company failed to demonstrate that the costs it presented for recovery are valid charitable expenses recoverable under the terms of Section 9-225.

The People, on the other hand, presented a well-reasoned basis for recovery of certain forecasted sponsorship expenses. This adjustment was on the same type of evaluation performed by the Commission in Docket No. 12-0293. AG IB at 41. The People noted that the Company failed to justify the level of proposed expenses and failed to include any itemization within its 2014 test year sponsorship forecast. See AG IB at 41; AG RB at 31-32. In the absence of a detailed itemization of sponsorship costs that may be incurred by AIC in the forecasted test year, the best available sponsorship information is the data that was most recently reviewed and addressed by the Commission in the Final Order addressing sponsorship costs in CIPS' last gas rate order, Docket No. 12-0293. AG IB at 41-42; AG/CUB Ex. 5.0 at 55.

The Proposed Order also disregards the People's arguments that the 2014 test year is a forecast and that the Company failed to prepare its forecast in an itemized fashion, rendering it impossible to analyze any detailed spending for the forecast. As the People have noted, the Company provided no "documented support" for the forecast of sponsorship expenditures to justify increasing that amount above its historical expense. Any historical period that is chosen and then analyzed can serve only as a proxy for what might actually be spent in 2014. Because of this, Mr. Brosch chose to use the best proxy: the last available Commission analysis of the Company's position. AG Ex. 5.0 at 55.

As noted above, the Commission review in 12-0511/12-0512 is not applicable because the Company in this docket did not present the sponsorshipexpenditures as charitable expenses. The People also demonstrated that the Company has not proven that their sponsorships will be different from the 2011 funding that was allowable after both the Company's self-disallowances and upon further analysis by the Commission in Docket No. 12-0293. AG/CUB Ex. 5.1, page 5. Therefore, the People urge the Commission to adopt the People's proposed adjustment to Sponsorship expenses.

Exception No. 4 Proposed Language

In accordance with the arguments presented above, the Commission analysis and conclusion at page 73-74 should be modified as follows:

> **Commission's Conclusions**
>
> AIC seeks to recover a forecasted $133,000 for 2014 sponsorship expenses. ~~This amount reflects removal by AIC of $25,519 in sponsorship expense from its proposed gas revenue requirement.~~
>
> The AG and CUB propose that AIC be allowed to recover an amount of just under $30,000 based on AIC's reliance on the itemization of sponsorship costs presented in Docket No. 12-0293, and the Commission's disallowance in Docket No. 12-0293 of 77% of the event sponsorship costs incurred by the Company in 2011, based upon the Commission's examination of those costs.
>
> Staff proposes to disallow approximately $74,000 of costs associated with corporate sponsorships. In Staff's view, the relevant criterion should be whether such sponsorships are statutorily impermissible promotional or goodwill advertising under Sec. 9-225(2) of the Act.

Section 9-225(2) of the Act provides, "In any general rate increase requested by any gas, electric, water, or sewer utility company under the provisions of this Act, the Commission shall not consider, for the purpose of determining any rate, charge or classification of costs, any direct or indirect expenditures for promotional, political, institutional or goodwill advertising, unless the Commission finds the advertising to be in the best interest of the Consumer or authorized as provided pursuant to subsection 3 of this Section."

For reasons explained in its initial brief, AIC argues that its current proposal is consistent with the Commission's analysis and findings in its recent Order in the Peoples/North Shore rate case in Docket Nos. 12-0511/0512 (Cons.), where the Commission found, in part, that that "the recipients of these sponsorships are either charitable organizations or organizations providing public welfare or educational services in the Utilities' service territory" and that these contributions were made to support fundraising events for local charities and communities in the Utilities' service territory and not primarily to promote the Utilities or foster goodwill towards the Utilities.

~~In reply briefs, Staff did not respond to these arguments by AIC, and the response from other parties was very limited. The Commission finds that AIC's proposal meets the criteria described in the Order in Docket Nos. 12-0511/0512 (Cons.), and should be allowed.~~

While the Commission may have opened the door to some allowance of charitable organizations serving the Company's service territory in Docket No. 12-0511/12-0512, the Act still distinguishes between charitable giving and sponsorship. If the Company had wanted to recover these sponsorship expenses as charitable contributions, the Company should have sought recovery for them as charitable contributions. More importantly, however, the Company failed to demonstrate that the costs it presented for recovery are valid costs recoverable under Section 9-225 as charitable contributions. Therefore, the Commission adopts the adjustment presented by the People.

VI. Exception No. 5: Non-Residential Revenues

In the Proposed Order, the ALJ declined to adopt AG/CUB witness Effron's proposed upward adjustment to test-year non-residential revenues of $4.092 million, found in AG/CUB Exhibit 6.1. However, the Proposed Order's conclusion appears to be based on a mischaracterization of the People's position. In the direct testimony of AG/CUB witness Effron and in their Corrected Initial Brief, the People did not "conclude that the changes in revenues for the Industrial and Transportation rate classes are significant and that the changes for the Commercial and Public Authority rate classes are not significant," as the Proposed Order suggests at 94. Rather, the People accepted the Company's forecast of test-year sales to the Commercial and Public Authority *customer* classes (not rate classes) but proposed to adjust the Company's forecast of test-year sales to the Industrial and Transportation customer classes. AG/CUB witness Effron did not determine whether "changes" in revenues were "significant" or "not significant" in his analysis. Rather, Mr. Effron found that the forecasted test-year Commercial sales level was above the 2012 weather-normalized level but below the 2010 and 2011 weather-normalized levels and was thus "reasonable." Similarly, Mr. Effron found that the forecasted test-year Other Public Authorities sales level was above the 2012 weather-normalized level but consistent with weather-normalized sales for 2010 and 2011 and was thus "reasonable." AG/CUB Ex. 6.0 at 5:12-6:13.

Additionally, the People did not "discard[] the data for Commercial and Public Authority rate classes," as the Proposed Order states at 94; rather, as discussed above, AG/CUB witness Effron carefully considered that data and concluded that the Company's forecast of those two customer classes was reasonable. It is Company witness Althoff who "discarded" data by focusing only on base-rate revenues for the twelve months ended June 30, 2013, and ignoring data from 2010 and 2011. See chart on AIC Ex. 38.0, page 4 (pasted again at page 73 of the Company's Initial Brief).

The Proposed Order's finding at Page 94 that the Company's "arguments regarding nonresidential customers switching between transportation and sales classes [are] reasonable and supported by the record" is particularly questionable. A review of the record shows that the Company presented no quantification of the revenue effect of switching of Commercial customers between transportation and sales classes (which was at the heart of the Company's argument), and conceded that it did not have the data to do so. AIC Ex. 38.0 at 7:137-147. The best information the Company could provide was that "[b]etween 2011 and 2013, AIC saw approximately 950 to 1,200 customers move between Rider S and Rider T on an annual basis" (AIC Ex. 38.0 at 6:126-127) – but this data did not provide *net* flows from Rider S *to* Rider T (or vice-versa, as the case may be). Without information on net flows from Rider S to Rider T, the Company's position, that the reason for the recent increase in Transport revenues was because some unclear number of customers switched from system sales to transportation service, is close to incoherent and cannot be the basis for the Commission's decision.

Exception No. 5 Proposed Language

In accordance with the arguments presented above, the Commission analysis and conclusion at page 94 should be modified as follows:

> ~~It is not clear to t~~The Commission finds that~~how~~ the AG and CUB~~ may~~ reasonably concluded that the ~~changes in~~ forecasted revenues for the Industrial and Transportation rate classes are ~~significant~~ not reasonable while~~and that~~ the forecasted revenues ~~changes~~ for the Commercial and Public Authority rate classes are reasonable~~not significant~~. It appears to the Commission that the data used in the table in Ms. Althoff's surrebuttal testimony for the Industrial and Transportation rate classes are the same that used by Mr. Effron for his proposed adjustment. ~~Additionally, the~~

~~Commission does not find that the AG or CUB offered an adequate reason for discarding the data for Commercial and Public Authority rate classes when the data for all rate classes appears to come from the same source. ¶~~
~~¶~~
The Commission finds the Company's arguments regarding nonresidential customers switching between transportation and sales classes to be unreasonable and not supported by the record. ~~As a result, the Commission concludes that it is appropriate to review AIC revenues for all nonresidential rate classes as a whole rather limiting the review to two rate classes as the AG and CUB suggest. The Commission believes the basis for AG/CUB's proposed adjustment to nonresidential revenues is not supported by the record and their proposed adjustment should not be adopted.~~¶

¶

Thus, the Commission adopts the adjustment to non-residential test-year operating revenues offered by AG/CUB witness Effron at AG/CUB Ex. 6.1. The Commission also finds the billing determinants as reflected in AIC's Schedule E-5 ~~are reasonable~~must be adjusted to reflect the necessary modifications to Industrial and ~~should be used~~Transportation sales for purposes of setting rates for the test year.

VII. CONCLUSION

WHEREFORE, the People of the State of Illinois respectfully request that the Commission enter a final order consistent with the recommendations made in this Brief.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

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